

**REMARKS**

Figure 2 has been amended to correct numbering errors. The Specification has been amended to clarify references to lenses 122 and 124.

Claims 1-62 are pending in the application. Claims 39-42 and 44-56 have been allowed. Claims 1-5, 7, 8, 12, 15-22, 30-33, 37, 38, 43 and 57-61 have been rejected. Claims 6, 9-11, 13, 14, 23-29, 34-36 and 62 have been objected to.

Claims 6, 9-11, 13, 14, 23-29, 34-36 and 62 have been amended to present them in independent format with all of the limitations of the claims from which they had previously depended. Claims 1, 30, 43, 57-59 have been amended to incorporate a closeable door wherein the device is prevented from operating unless the door is closed. Claims 2-5, 7, 8, 12, 15-22, 31-33, 37, 38, 60 and 61 which depend upon these Claims also incorporate these limitations.

***Claim Rejections- 35 USC §102***

1. Claims 1, 7, 12, 43, 57 and 61 were rejected under 35 U.S.C. §102(e) as being anticipated by Silver et al. (U.S. Patent No. 6,372,511).

Silver et al. teach a hand-holdable self-contained luminometer for use in detecting and quantifying low levels of luminescent emissions. Silver et al. do not teach a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed.

According to M.P.E.P. §2131 a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Currently amended independent Claims 1, 43 and 57 and Claims 7, 12 and 61 which depend upon them comprise a closeable door wherein the device is prevented from operating unless the door is closed. Silver et al. do not

teach this limitation. Therefore, each and every limitation as set forth in the Claim is not found in the reference. Accordingly, the Claims are not anticipated by the prior art reference. In light of these amendments, Claims 1, 7, 12, 43, 57 and 61 are patentable over the prior art device. Reconsideration of the rejection is requested.

***Claim Rejections- 35 USC §103***

2. Claims 2-3, 22, 33, 38, 59 and 60 were rejected under 35 U.S.C. §103(a) as being anticipated by Silver et al. (U.S. Patent No. 6,372,511) in view of Taylor et al. (U.S. Patent No. 6,187,267) and Bryan (U.S. Patent No. 6,458,547) and Anderson et al. (U.S. Patent No. 4,818,883).

Silver et al. was discussed previously.

Taylor et al. teach a device for detecting chemiluminescence having a stage for supporting a sample and one or more of the following elements: (1) an optics head, (2) an optical relay structure for transmitting chemiluminescence from the sample to a detector, (3) a drive mechanism, (4) a sensor for detecting proximity of the optical relay structure to the sample, (5) a mask structure for selecting an effective diameter of the

optical relay structure, and (6) a baffle for blocking extraneous light from entering the optical relay structure. Taylor et al. do not teach a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed.

Bryan teaches solid phase methods for the identification of an analyte in a biological medium, such as a body fluid, using bioluminescence. Bryan teaches a chip designed for identification of an analyte and detecting bioluminescence, methods employing biomineralization for depositing silicon on a matrix support, and a synthetic synapse. Bryan does not teach a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed.

Anderson et al. teach a luminometer apparatus has a light-tight box into which a cuvette containing a sample and a reagent are located for producing a phosphorescent reaction. The phosphorescent reaction is detected by a photodetector and a shutter is interposed between the cuvette and the shutter. Output signals from the photodetector are applied to a circuit arrangement which detects the phosphorescent reaction at predetermined intervals and by subtracting the successive values of light

from one another so a measured peak value of light intensity is determined. The shutter is closed and the dark current signal of the photodetector is determined and subtracted from the measured peak value. Anderson et al. do not teach a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed.

To establish a *prima facie* case of obviousness, three criteria must be met, as found in M.P.E.P. §2143. There must be first some suggestion or motivation to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all of the claim limitations.

Currently amended independent Claims 1, 30, 57 and 59 and Claims 2-3, 22, 33, 38 and 60 which depend upon them claim a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed. The limitations of the presently claimed invention are not taught or suggested by the prior art. Therefore, no *prima facie* case of obviousness can be established. In light of these amendments, Claims 2-3, 22, 33, 38, 59 and 60 are patentable over the prior art. Reconsideration of the rejection is requested.

3. Claims 4-5 were rejected under 35 U.S.C. §103(a) as being anticipated by Silver et al. (U.S. Patent No. 6,372,511) in view of Taylor et al. (U.S. Patent No. 6,187,267) and Bryan (U.S. Patent No. 6,458,547).

Silver et al., Taylor et al. and Bryan were discussed previously. Currently amended independent Claim 1 and Claims 4-5 which depend upon Claim 1 claim a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed. The limitations of the presently claimed invention are not taught or suggested by the prior art. Therefore, no *prima facie* case of obviousness can be established. In light of these amendments, the Claims 4-5 are patentable over the prior art. Reconsideration of the rejection is requested.

4. Claim 8 was rejected under 35 U.S.C. §103(a) as being anticipated by Silver et al. (U.S. Patent No. 6,372,511) in view of Wood (U.S. Patent No. 5,650,289).

Silver et al. was discussed previously.

Wood teaches methods and compositions for improved kinetics of beetle luciferase-luciferin reactions for assaying samples for the presence of ATP. The invention also provides the complex of the coenzyme, Coenzyme A, a

beetle luciferase and oxyluciferin in its excited state in the luciferase-luciferin reaction and luciferyl-CoA, the thioester of Coenzyme A and luciferin (D-(-)-2-(6'-hydroxy-2'-benzothiazolyl)- $\Delta^2$ -thiazoline-4-carboxylic acid). Wood does not teach a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed.

Currently amended independent Claim 1 and Claim 8 which depends upon Claim 1 claim a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed. The limitations of the presently claimed invention are not taught or suggested by the prior art. Therefore, no *prima facie* case of obviousness can be established. In light of these amendments, Claim 8 is patentable over the prior art. Reconsideration of the rejection is requested.

5. Claim 15 was rejected under 35 U.S.C. §103(a) as being anticipated by Silver et al. (U.S. Patent No. 6,372,511) in view of Wright et al. (U.S. Patent No. 6,660,469).

Silver et al. was discussed previously.

Wright et al. teaches an apparatus for testing a biological fluid from an animal for the presence of disease in the animal. The apparatus including a container, a

dipstick and a luminometer. The luminometer receives the container and is operated whereby a determination of the level of bacteria in the sample and hence of disease in the animal is made, by sensing the light emissions from the container. Wright et al. do not teach a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed.

Currently amended independent Claim 1 and Claim 15 which depends upon Claim 1 claim a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed. The limitations of the presently claimed invention are not taught or suggested by the prior art. Therefore, no *prima facie* case of obviousness can be established. In light of these amendments, Claim 15 is patentable over the prior art. Reconsideration of the rejection is requested.

6. Claims 16-21 were rejected under 35 U.S.C. §103(a) as being anticipated by Silver et al. (U.S. Patent No. 6,372,511) in view of Wright et al. (U.S. Patent No. 6,660,469) and further in view of Ghaed et al. (U.S. Patent No. 5,700,427).

Silver et al. and Wright et al. were discussed previously.



Ghaed et al. teach an apparatus for carrying out electrochemiluminescent measurements which includes a working electrode and a temperature sensor. The electrochemiluminescent measurements made by the apparatus are adjusted based upon the measured temperature. Ghaed et al. do not teach a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed.

Currently amended independent Claim 1 and Claims 16-21 which depend upon Claim 1 claim a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed. The limitations of the presently claimed invention are not taught or suggested by the prior art. Therefore, no *prima facie* case of obviousness can be established. In light of these amendments, the Claims 16-21 are patentable over the prior art. Reconsideration of the rejection is requested.

7. Claim 31 was rejected under 35 U.S.C. §103(a) as being anticipated by Silver et al. (U.S. Patent No. 6,372,511) in view of Liljestrand et al. (U.S. Patent No. 6,200,531).

Silver et al. was discussed previously.

Liljestrand et al. teach an apparatus for

electrochemiluminescence (ECL) measurements with an ECL chamber having a transparent window defining one wall of the chamber and a photodetector mounted closely adjacent to the window. An assay fluid is subjected to a magnetic field so as to electrically energized the fluid. Electrochemiluminescence induced in the fluid is measured by the photodetector. Liljestrang et al. do not teach a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed.

Currently amended independent Claim 30 and Claim 31 which depends upon Claim 30 claim a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed. The limitations of the presently claimed invention are not taught or suggested by the prior art. Therefore, no *prima facie* case of obviousness can be established. In light of these amendments, Claim 31 is patentable over the prior art. Reconsideration of the rejection is requested.

8. Claims 30, 32, 37 and 58 were rejected under 35 U.S.C. §103(a) as being anticipated by Silver et al. (U.S. Patent No. 6,372,511).

Silver et al. was discussed previously. Currently

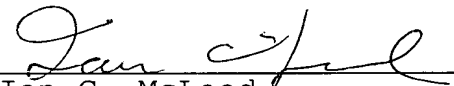
Neogen 4.1-34  
Appl. No. 09/821,571  
Amdt. dated July 27, 2004  
Reply to Office Action of March 29, 2004

amended independent Claim 30 and 58, and Claims 32 and 37 which depend upon Claim 30 claim a hand-held assay device with a closeable door wherein the device is prevented from operating unless the door is closed. The limitations of the presently claimed invention are not taught or suggested by the prior art. Therefore, no *prima facie* case of obviousness can be established. In light of these amendments, Claims 30, 32, 37 and 58 are patentable over the prior art. Reconsideration of the rejection is requested.

Neogen 4.1-34  
Appl. No. 09/821,571  
Amdt. dated July 27, 2004  
Reply to Office Action of March 29, 2004

The cited references do not teach all of the elements of the present invention. Therefore, in light of the above, it is now believed that Claims 1-62 are patentable and in condition suitable for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

  
Ian C. McLeod  
Registration No. 20,931

McLEOD & MOYNE, P.C.  
2190 Commons Parkway  
Okemos, MI 48864  
(517) 347-4100  
Fax: (517) 347-4103

Attachments

Appl. No. 09/821,571  
Amdt. Dated: July 27, 2004  
Reply to Office Action of March 29, 2004

APPENDIX 1

- Annotated Marked-Up Drawing  
Figure 2

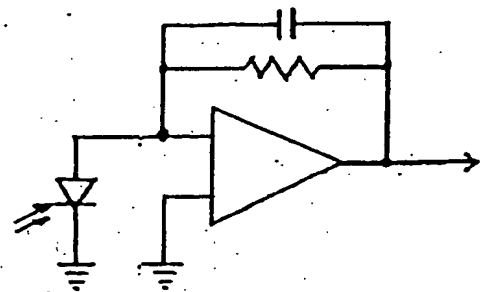
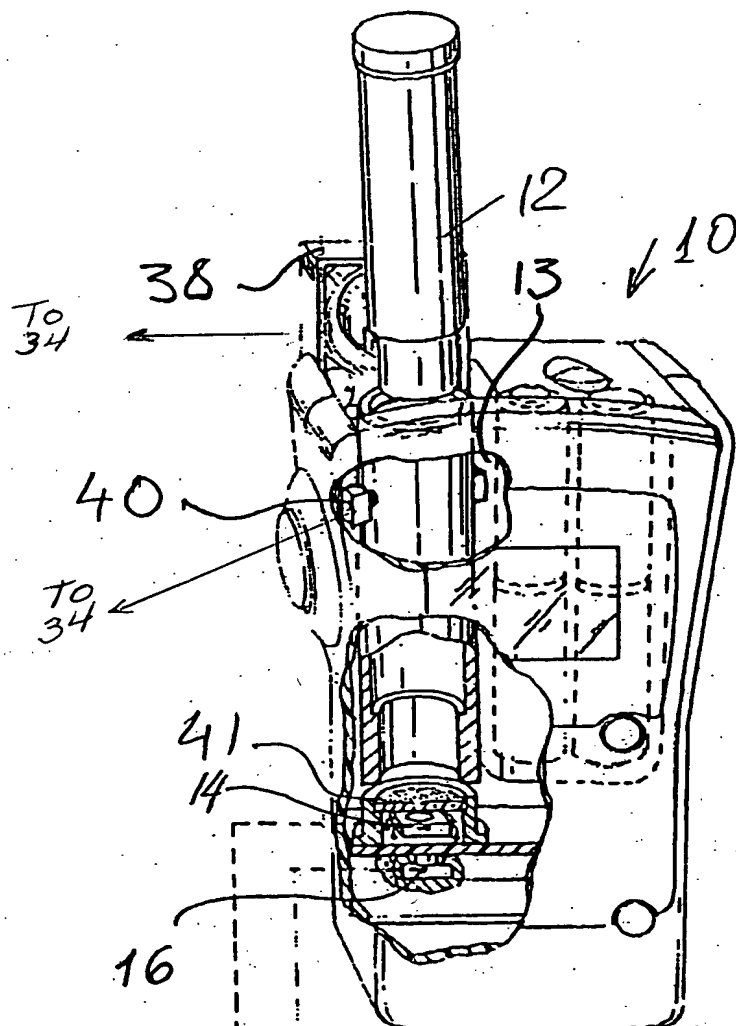


FIG. 1  
(PRIOR ART)

